

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

MAIN STREET TEXTILES, L.P. AND  
JOAN FABRICS CORPORATION, A  
SINGLE EMPLOYER

Employer<sup>1</sup>

and

NEW ENGLAND JOINT BOARD, UNITE,  
AFL-CIO, CLC

Petitioner

Case 1-RC-21687

**DECISION AND ORDER**<sup>2</sup>

The Union seeks to represent a bargaining unit of production and maintenance employees, including lead persons, employed by the Employer at its Main Street Textiles

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<sup>1</sup> The name of the Employer appears as amended at the hearing. The Employer has agreed that, for purposes of this representation case, it will not dispute that Main Street Textiles and Joan Fabrics constitute a single employer.

<sup>2</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

facility on Commerce Drive in Fall River, Massachusetts.<sup>3</sup> The Employer seeks dismissal of the petition on the ground that it has made an irrevocable decision to close the plant within a few months and that there would be no meaningful opportunity for the parties to bargain should the employees choose to be represented by the Union. The Union disputes the imminence of the closing and the irrevocability of the Employer's decision to close. I find that the evidence supports the Employer's position.

#### Facts<sup>4</sup>

Main Street Textile is a subsidiary of Joan Fabrics Corporation, which owns a number of businesses in Massachusetts, North Carolina, and Mexico. Joan Fabrics Corporation's corporate offices are located in Tyngsboro, Massachusetts. Elkin McCallum is the chairman, CEO, and owner of Joan Fabrics Corporation and oversees all of its businesses. Penny Richards is the president and chief operating officer for Main Street Textiles.<sup>5</sup>

Main Street Textiles operates a weaving plant that produces decorative fabrics for the home furnishing industry and for the "contract" industry. It supplies furniture manufacturers and distributors. Orders from the manufacturers are generated based on orders from retail furniture companies. Main Street Textiles does not have long-term contracts. It receives orders every day.

Main Street Textiles has been in operation since 1964. At first it was located at a location on North Main Street in Fall River. In September 2000, Main Street Textiles

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<sup>3</sup> At the hearing, the parties stipulated that the unit sought is an appropriate unit. The parties further stipulated to leave unresolved the inclusion or exclusion of approximately four to five employees in the general maintenance department and to permit those employees to vote subject to challenge in any election.

<sup>4</sup> The Employer has moved to include a post-hearing affidavit in the record. The motion is denied, and I have disregarded the post-hearing affidavit in reaching my conclusion. See, Section 102.66 of the Board's Rules and Regulations, which provides that "any party and the hearing officer [in a representation case hearing] shall have power to call, examine, and cross-examine witnesses...Witnesses shall be examined orally under oath."

<sup>5</sup> Main Street Textiles was originally a part of Joan Fabrics Corporation. In 1995, Main Street Textiles and two other Joan Fabrics businesses in Massachusetts were spun off as limited partnerships within the Tyng Textile group, which was independent of Joan Fabrics. McCallum was the 50% owner and general partner of these businesses, while Penny Richards and McCallum's daughter, Kerry, each owned 25% of the Tyng Textile group. As part of a refinancing of the businesses in July 2001, all corporate holdings, including Tyng Textile, were put back under the umbrella of Joan Fabrics Corporation. McCallum bought out the interests of Penny Richards and his daughter Kerry in Tyng Textile, which no longer exists. He is now the 100% owner of Joan Fabric Corporation. A holding company, JFC Holdings, owns the stock of Joan Fabric Corporation. McCallum and his wife, Donna, are the principals and sole shareholders of JFC Holdings.

moved to a new facility at 81 Commerce Drive in Fall River.<sup>6</sup> The move cost \$40 million, including the cost of building the new plant, transferring existing equipment, and adding new equipment. The new facility had 600,00 square feet of space and doubled the capacity of the plant. McCallum's plan was to expand the business at Commerce Drive.

McCallum testified that since then there has been a severe decline in Joan Fabric Corporation's business overall, as a direct result of a general decline in the economy and competition from low-cost imports from China and Mexico. Joan Fabrics has not raised prices for existing products for nine years. Company-wide, sales have been off almost 25 per cent in the last two years. Joan Fabric's pre-tax earnings for 2003 will show a loss of about \$18 million. In the last two years, Joan Fabrics has shut down three plants in North Carolina, including a weaving plant.

McCallum testified that, around September 1, 2003,<sup>7</sup> he began to discuss with Richards and his daughter, Kerry, a plan to shut down the Main Street Textiles plant in Fall River. McCallum testified that he determined to close the Commerce Drive facility due to its poor business and productivity. Sales for Main Street Textiles have dropped from a peak of \$80 million per year in 2001 to about \$50 million projected for 2003. Over the last six to nine months, performance in Fall River has deteriorated such that the "variances" at that plant were the largest in the entire company. Joan Fabrics has three other plants in North Carolina that produce similar goods, but Fall River is the least productive with respect to cost per thousand "picks."<sup>8</sup> That is, due to differences in efficiency, quality, and labor rates, it costs half as much to make a yard of fabric in North Carolina as it does in Fall River.

Richards testified that Main Street Textiles did not achieve the growth that was expected when they moved to the new facility, that production and quality have been a battle for the last two and a half years, that there is machinery in the plant that was never set up after the move, and that she has purchased no new equipment in the last twelve months.

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<sup>6</sup> McCallum moved operations from three different Fall River locations, North Main Street, Brayton Avenue, and Cove Street, into the Commerce Drive facility.

The Commerce Drive property itself is actually owned by a partnership called Charles McAnsin. McCallum is the 50% owner and general partner of Charles McAnsin. Penny Richards and McCallum's daughter, Kerry, are each 25% owners and limited partners. Main Street Textiles pays rent to the Charles McAnsin partnership for the Commerce Drive location.

<sup>7</sup> All dates hereafter refer to 2003 unless otherwise noted.

<sup>8</sup> The cost of each product is measured based on cost per thousand picks. A pick is a revolution of the weaving loom. Each fabric requires a certain number of picks per inch.

McCallum began to look for a buyer for the Commerce Drive facility. On September 9, he contacted a potential buyer he knew of.<sup>9</sup> McCallum exchanged correspondence with the buyer, promising to send architectural drawings, an appraisal, and land lease. He arranged for the potential buyer to tour the facility on October 4.

At the same time, McCallum was also pursuing a “sale leaseback” arrangement with a different investor group with respect to about eight properties he owns, including the Commerce Drive property. Under this arrangement, the investor group would purchase the properties and Joan Fabrics would lease them back, including the property on Commerce Drive.<sup>10</sup>

On October 6, he wrote the potential buyer that he was on the verge of finalizing a “sale leaseback” for the Commerce Drive facility and other properties and needed a letter of intent from the potential buyer by the end of the week if he wished to proceed. On October 10, the buyer sent an “expression of interest” proposing to purchase the property for a price in the range of \$19 to \$21 million. On October 16, McCallum replied that the proposed price range was unacceptable, that he would prefer an outright sale but would also consider leasing with an option to purchase, and that he needed to wrap up the matter quickly and move on with his plans. On October 28, McCallum made a counter offer of \$24 million for the building only, reiterated the possibility of a lease with an option to purchase, and stated that he intended to put the property on the market within the next 30 days if a deal was not in the cards.

McCallum testified that he expected to hear back from the potential buyer soon, but as of the date of the hearing on November 4, he had no deal with the potential buyer. McCallum’s discussions with the investor group with whom he had explored a sale leaseback arrangement have been suspended at this point. McCallum has also contacted the Fall River Redevelopment Authority regarding potential buyers or renters.

McCallum testified that his decision to close the Commerce Drive is irrevocable, even if he cannot sell the property to this or another buyer. Richards, who was involved in the decision to close the plant, testified that she cannot foresee any circumstance that would change their decision to shut it down.

On September 29, McCallum sent a memo to Richards asking her to calculate shutdown costs, machinery and equipment transfer costs, and permanent savings based on the shutdown. On the same date, he sent a memo to his payroll manager, Terry Green, asking her to calculate as soon as possible Joan Fabric’s severance obligation if he were to shut down all operations at Main Street Textiles and Dutton Yarn Company, another

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<sup>9</sup> By agreement of the parties, the name of the potential buyer was redacted from all documents entered into evidence due to confidentiality concerns.

<sup>10</sup> McCallum did not explain what he would do with the plant if Joan Fabrics leased it back from the investor group, i.e., whether he would continue to operate the plant in that event.

Joan Fabrics operation that he may also close when Main Street Textiles closes.<sup>11</sup> Green provided the figures for an eight-week payout for the employees.

On October 14, the employees of Main Street Textiles engaged in a walkout.<sup>12</sup> On October 16, McCallum sent a letter to Main Street Textiles' customers, explaining that the work stoppage had resulted in a virtual shutdown of the plant. He explained that he was moving quickly to transfer all open orders to his weaving operations in North Carolina and Mexico, that finishing and distribution would be handled out of a North Carolina plant, and that he expected to complete this transition within 45 to 60 days. He stated that he hoped the Fall River employees would end their walkout and resume their normal work schedule in the near future. McCallum testified that he started to move raw material and products out of the plant that day.

On October 17, pursuant to the Worker Adjustment and Retraining Notification Act (WARN),<sup>13</sup> Main Street Textiles mailed a letter to all of its employees, notifying them that Main Street Textiles had decided to permanently discontinue its manufacturing operations in Fall River. The letter stated that Main Street Textiles expected the plant to close permanently by April 30, 2004, that the first separations would occur about October 17, that employees would be laid off at various times subject to the availability of work, and that the Company would like to delay layoffs as long as possible depending on the availability of work. At the same time, Main Street Textiles also sent required WARN notices to the Mayor of Fall River and the president of the Commonwealth Corporation, notifying them that Main Street Textiles expected to close permanently by April 30, 2004.

On October 17, McCallum issued a press release to the Fall River newspapers and various trade papers in the industry announcing Joan Fabrics' decision to discontinue manufacturing operations in Fall River due to the fact that its Fall River operations were the least competitive within its group of companies. He noted that the decision to shut down would result in the loss of 400 jobs. The press release did not provide a time line for the plant closing. By letter dated October 20, McCallum requested the Fall River Office of Economic Development to assist displaced workers with job training and relocation.

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<sup>11</sup> Dutton Yarn Company, which is located in Lowell, Massachusetts, produces a type of yarn called chenille, which is used primarily by Main Street Textiles. The rest of the chenille is sent to other Joan Fabrics plants in the South. Joan Fabrics already has a small chenille operation in the South. McCallum testified that if all weaving is done in the South, it would also make sense to do all the yarn-making there in order to save on freight costs. McCallum testified that he has not notified the 150 Dutton Yarn Company employees that their plant may close because he has not yet made the decision to do so. It is an option if he closes the Fall River plant, but it may not necessarily happen.

<sup>12</sup> The employees returned to work about Monday, October 20.

<sup>13</sup> I take judicial notice of the fact that the WARN Act is a federal law requiring certain employers to give 60 days notice of a plant shut down.

McCallum testified that, although the WARN notices gave an April 30, 2004 closing date, he now expects the plant to close no later than March 2004 and possibly sooner due to continued weakness in orders. Production in October was down substantially from September. The process of moving the jobs and business has been very successful and will probably go faster than he had anticipated. Richards testified that she is now looking at the plant closing by February or March 2004 at the latest.

Richards testified that in January, Main Street Textiles had 520 employees. Historically, it has operated seven days a week, with four shifts per day. In April, the plant was cut back to running five days a week with three shifts per day, because there was not enough work to keep it running, even after moving some work from North Carolina to Fall River. Layoffs reduced the work force to 443 employees. In July, layoffs reduced the plant to about 400 employees. After another round of layoffs in September and October, the plant is down to 335-350 employees. Several supervisors and managers were laid off as well. Richards testified that more layoffs are planned, with another 109 employees to be laid off in the next phase.

Main Street Textiles has not yet moved equipment out of the plant, although it has moved fabrics to other plants with idle capacity. Richards testified that, since the end of September or early October, she has been working with an engineer on a loom relocation project. The Company plans first to move some machinery from two plants in North Carolina to its facility in Mexico, and then will move equipment from Commerce Drive to Mexico.

Employee Joao Raposo testified that a few days after the employees received the WARN letter, Main Street Textile production manager Keith Stamp met with a group of employees about the decision to shut down the plant. The employees asked if anything could be done to change the decision. Stamp said that nothing was lost yet and that if they all worked together they had a chance to change things around. Raposo testified that Richards, Stamp, and other managers met with the about 30 third-shift employees a week or so later in the cafeteria. In answer to an employee's question, Richards stated that she will fight to keep the place open and that, even if it closes, she will go down fighting.

Employee Mary Lou Hermenegildo testified that about two days after the employees returned to work from the walkout, employees attended a meeting with Keith Stamp, supervisor Larry Morton, and Ed DiPetrillo and Lou Anne from the human resources department.<sup>14</sup> DiPetrillo read the letter notifying the employees about the decision to close. Stamp said he wanted the plant to move down south. Hermenegildo and another employee said this would not happen without a fight, that they were going to try to keep the plant open and did not want to shut it down. She testified that management then said they were going to try to keep it open and that they would work together to keep it open.

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<sup>14</sup> DiPetrillo is the Vice President of Human Resources.

## Discussion

In circumstances involving the imminent completion of a construction project or imminent plant closure, the Board has found that it serves no useful purpose to conduct an election in the unit sought, where there is no evidence that the employer will have any work for the petitioned-for employees in the future. M.B. Kahn Construction Co., Inc.<sup>15</sup> The period of time available between the direction of an election and the elimination of the bargaining unit is a major factor in the analysis. The Board has refused to direct an election where six months or fewer remain before the elimination of the bargaining unit. M.B. Kahn Construction Co., Inc.<sup>16</sup> (five or six months); Martin Marietta<sup>17</sup> (three and a half months).<sup>18</sup>

I find that the evidence supports the Employer's forecast that it will cease its manufacturing operations at the Fall River facility by April 2004 or, in all likelihood, as soon as March 2004. The evidence of the plant's financial difficulties is uncontroverted. The prospect of selling and then leasing back the property fell through. While McCallum has not yet found a purchaser for the plant, there is uncontroverted documentary evidence that he was trying to find one and of his intent to close the plant even if he cannot find a buyer. In this regard, he has obtained estimates of the costs of shutting down, transferring machinery, and paying severance to Main Street Textiles employees. While Main Street Textiles has not yet relocated the Commerce Drive equipment, Richards has made plans to do so and some raw materials and products have already been relocated to other plants. Main Street Textiles laid off some employees in September and October in anticipation of closing. It sent WARN notices to all of the remaining employees and to the relevant public officials indicating an April 30, 2004 closing date and also issued a press release concerning the upcoming plant shutdown. In these circumstances, I find that the closing of the plant is definite and imminent enough that holding an election is not warranted.<sup>19</sup>

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<sup>15</sup> 210 NLRB 1050 (1974).

<sup>16</sup> *Id.*

<sup>17</sup> 214 NLRB 646(1974).

<sup>18</sup> The Union argues that the Board should reconsider its position that it will not hold an election where there is evidence that operations will cease within a few months, because it is not onerous to hold an election, and, if the plant does shut down after all, the Union may still represent the employees with respect to the impact of the closing. I am constrained to follow existing Board law.

<sup>19</sup> Although there was testimony that managers made statements to employees to the effect that they would try to keep the place open, I find that that testimony does not outweigh the overwhelming evidence to the contrary.

**ORDER**

**IT IS HEREBY ORDERED** that the petition be dismissed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by December 12, 2003.

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/s/ Rosemary Pye  
Rosemary Pye, Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 21st day of November 2003.

347-8020-8050

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

MAIN STREET TEXTILES, L.P. AND JOAN FABRICS  
CORPORATION, A SINGLE EMPLOYER

Employer

and

NEW ENGLAND JOINT BOARD, UNITE, AFL-CIO, CLC

Petitioner

Case 1-RC-21687

**ERRATUM**

On November 21, 2003, the Regional Director issued a Decision and Direction of Election in the above-entitled matter.

That Decision is hereby corrected as follows:

Due to a typographical error, the Decision is hereby corrected as follows:

By striking the last sentence on page 8 of the Decision in the section entitled, "Right to Request Review," and replacing it with the following sentence:  
This request must be received by the Board in Washington by December 5, 2003.

/s/ Rosemary Pye

Rosemary Pye, Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 24th day of November, 2003.

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